

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
CONTRACT 200

Docket No. MC2021-115

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE  
CONTRACT 200 (MC2021-115)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2021-117

**JOINT STATEMENT OF THE UNITED STATES POSTAL SERVICE AND THE  
STRATEGIC ORGANIZING CENTER PURSUANT TO PRC ORDER 6189**

(August 5, 2022)

The United States Postal Service and Strategic Organizing Center ("SOC") hereby jointly submit this statement pursuant to Commission Order No. 6189 dated June 6, 2022. In its Order, the Commission required the Postal Service and SOC to meet and confer in a good faith effort to narrow, resolve, and clarify disputed issues related to SOC's May 12, 2022 motion requesting access to non-public materials. Specifically, the Commission ordered the Postal Service and SOC to address the following matters:

- a) Potential identification of the docket or contract number(s) applicable to NSAs between the Postal Service and Amazon;
- b) Potential provision of the unredacted text of the applicable contract(s) between the Postal Service and Amazon and the supporting Governor's Decision(s);
- c) Potential narrowing of the scope of non-public materials sought by SOC;
- d) Potential terms for a non-disclosure agreement governing SOC's counsel's use, care, and dissemination of any non-public information and materials; and

- e) Any other potential matter that would aid in an efficient resolution of the request for access to the non-public materials.

The Postal Service and SOC met on July 25, 2022 and July 27, 2022, but despite efforts by both parties, were unable to resolve or narrow the disputed issues.

Regarding Items (a) and (b), SOC stated that after further research, its information and belief is that the contract relevant to its potential complaint to the Commission regarding USPS's business relationship with Amazon is Parcel Select Contract 44, filed in Docket Nos. MC2021-42 and CP2021-43. SOC requested that the Postal Service confirm that this is the relevant contract, and that it provide SOC with access to the full unredacted contract and accompanying Governors' Decision. SOC stated it seeks redacted portions of the contract and Governor's Decision to determine whether they contain terms regarding performance standards and criteria, incentives and penalties, precise service categories, price rates, service locations, and the parties' duties and obligations with respect to termination notice, damage, and other matters relevant to the issues SOC is considering raising in its potential complaint to the Commission.

The Postal Service responded that, if such a contract existed, the binding terms of such contract likely would limit the ability of the Postal Service to disclose both the identity of the other party thereto or any of the non-public terms thereof, including in the context of the "meet and confer" ordered by the Commission. Moreover, the Postal Service noted that beyond its potential inability to disclose the parties or non-public terms without risk of breaching such a hypothetical contract, it would be contrary to the Postal Service's interests to agree voluntarily to do so. To voluntarily disclose such

sensitive contractual information likely would have a significant negative effect on current business relationships and a chilling effect on potential future business relationships. As such, the Postal Service indicated that in these circumstances, and despite SOC's willingness to agree to the Commission's customary protective conditions, it would not agree to disclose such information at this time, and that it certainly would not be comfortable voluntarily agreeing to do so without the consent of any hypothetically-involved third parties.

Regarding Item (c), SOC reiterated that the information in which it is particularly interested includes terms or other information concerning performance standards and criteria, incentives and penalties, service categories, duties or obligations with respect to termination and/or damage, and similar information bearing on the SOC's potential complaint. It further stated that it would be difficult to be more specific about the precise terms or information it seeks from the contract because it does not have access to the unredacted contract itself, and there are entire sections of the publicly-available version of Parcel Select Contract 44, including the headings to those sections, that are completely redacted. SOC further stated that it would be interested in obtaining a template or form contract to aid in identifying sections or information in which it would be particularly interested.

Regarding a template, the Postal Service replied that if there were a contract of the scale and significance that SOC was suggesting, there would not be a template for such a contract, as the terms would be negotiated in detail and not follow a predetermined pattern.

As a potential middle ground, the Postal Service raised the possibility of the parties agreeing to the filing, under seal, of a statement by the Postal Service indicating the extent to which the hypothetical contract at issue, to the extent it exists, contains performance-related terms of the type SOC seeks to explore, the accuracy of which could then be independently verified by the Commission. The Postal Service noted that the filing of any such statement might require the consent of any outside party to the hypothetical contract.

SOC responded, after consideration, that it would consider such a statement only if the statement contains actual information and detail from the contract sufficient to enable SOC to evaluate those terms and information to determine, for itself, whether the information bears on the issues SOC is investigating. The parties ultimately did not reach agreement on an acceptable alternative to full disclosure of contract terms.

The Postal Service inquired as to whether SOC would be willing to disclose more particulars regarding the sources and nature of the information it claims to possess purportedly supporting its allegation of undue discrimination, so that the Postal Service could investigate and potentially take action to address any such issues without further procedural steps. SOC declined to provide any such details at this time because it does not view this as an adequate substitute for its own inquiry.

Regarding Item (d), SOC stated that in its May 12, 2022 Motion to Request Access, its counsel had already certified that they are not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and that they agreed to comply with the protective conditions required by the Commission, including that they will use the materials only for the

purpose authorized by the Commission; that they will protect the materials, excerpts from the materials and information generated from the materials from dissemination or disclosure to unauthorized persons; that they will mark all copies of the materials as Confidential; and that they will execute and file Certifications of Compliance with Protective Conditions and Termination of Access upon termination of their access to the materials.

The Postal Service stated that it is concerned that agreement with the standard PRC provisions might not be sufficient to ensure non-disclosure in these circumstances, and therefore sought to explore the possibility of entering into a separate non-disclosure agreement between the parties that would be enforceable in federal district court. The Postal Service also stated that any such non-disclosure agreement would likely require the consent of any other party to such a hypothetical contract. The parties did not reach agreement on pursuing such a nondisclosure agreement at this time.

Regarding Item (e), and as indicated in the descriptions above, despite efforts by both parties, the Postal Service and SOC were not able to reach agreement on any other matters that may aid in an efficient resolution of the request for access to non-public materials.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 5, 2022

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